



Committee on Claims

Tuesday

March 28, 2006

10:15 A.M.

28 House Office Building

ACTION PACKET

Allan G. Bense
Speaker

John Quinones
Chair

COMMITTEE MEETING REPORT

Claims Committee

3/28/2006 10:15:00AM

Location: 28 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
John Quinones (Chair)	X		
Phillip Brutus			X
Charles Dean			X
Dorothy Hukill	X		
Priscilla Taylor	X		
Totals:	3	0	2

COMMITTEE MEETING REPORT

Claims Committee

3/28/2006 10:15:00AM

Location: 28 HOB

PCB CLAM 06-03 : Compensation for wrongful incarceration

☒ Favorable With Amendments (2)

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Phillip Brutus			X		
Charles Dean			X		
Dorothy Hukill	X				
Priscilla Taylor		X			
John Quinones (Chair)	X				
Total Yeas: 2		Total Nays: 1			

Appearances:

Jennifer Greenberg - Proponent
Director, FL Innocence Initiative
1720 S. Gadsden St.
Tallahassee FL 32301
Phone: (850) 561-6768

Mike Olenick - Opponent
Attorney, representing Alan Crotzer
215 S. Monroe St.
Tallahassee FL 32301
Phone: (850) 224-1585

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Adopted A1
Bill No.

COUNCIL/COMMITTEE ACTION

ADOPTED Y (Y/N)
ADOPTED AS AMENDED — (Y/N)
ADOPTED W/O OBJECTION — (Y/N)
FAILED TO ADOPT — (Y/N)
WITHDRAWN — (Y/N)
OTHER —

Council/Committee hearing bill: Claims

Representative(s) Quinones offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Claim for compensation for wrongful incarceration.—

(1) A person who has been wrongfully convicted of a felony offense and incarcerated within the Department of Corrections as a result of that conviction may be financially compensated if the claimant is actually innocent.

(2) As used in this section, the term "actually innocent" means:

(a) The claimant was charged, by indictment or information, with the commission of an offense classified as a felony;

(b) The claimant was convicted of the offense;

(c) The claimant was sentenced to incarceration for a term of imprisonment as a result of the conviction;

(d) The claimant was imprisoned solely on the basis of the conviction for the offense;

(e) The claimant's acts did not constitute a crime; and

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22 (f) A court of competent jurisdiction found by clear and
23 convincing evidence that the claimant is actually innocent as
24 defined in this act and issued an order vacating, dismissing, or
25 reversing the conviction and sentence and providing that no
26 further proceedings can or will be held against the claimant on
27 any facts and circumstances alleged in the proceedings which had
28 resulted in the conviction.

29 (3) A claimant shall not be eligible for compensation if
30 the claimant:

31 (a) Pled guilty or nolo contendere to, or was convicted
32 of, regardless of adjudication, a felony prior to payment of a
33 claim pursuant to this Act; or

34 (b) Submits a completed application to the Department of
35 Legal Affairs later than two years after the order vacating,
36 reversing, or dismissing the sentence.

37 (4) The claimant must submit to the Department of Legal
38 Affairs for review and processing the following documents as an
39 application package, as proof of the person's eligibility for
40 compensation:

41 (a) A certified copy of the judgment and sentence in the
42 case, including fingerprints;

43 (b) A set of the claimant's fingerprints, prepared by the
44 sheriff of the county in which the person resides and taken
45 within the 6 months before the date the claim is filed;

46 (c) A recent photograph of the claimant in a format no
47 larger than 2 inches by 3 inches;

48 (d) A certified copy of the order vacating, dismissing, or
49 reversing the conviction;

50 (e) A record from the Department of Corrections showing
51 the actual dates of the claimant's incarceration and a
52 photograph of the person taken by the department; and

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53 (f) A brief, sworn statement reciting the facts upon which
54 the claim for compensation is based, and showing that the
55 claimant is actually innocent and in compliance with all
56 requirements of this act.

57 (5)(a) Upon receipt of an application, the Department of
58 Legal Affairs shall examine the application and within 30 days
59 after such receipt, notify the applicant of any apparent errors
60 or omissions and request any additional information the
61 Department is permitted by law to require. The Department shall
62 not deny a claim for failure to correct an error or omission or
63 supply additional information unless the Department timely
64 notified the claimant within the 30-day period.

65 (b) The Department of Legal Affairs shall process and
66 review the claim within a reasonable time after receiving a
67 completed application, which may not exceed 90 days.

68 (6) If the Department of Legal Affairs determines that the
69 claim for compensation is supported by sufficient proof the
70 department must forward a request for payment to the Chief
71 Financial Officer who shall pay the claim according to the
72 recommendation. Payment shall be as follows:

73 (a) At the rate of \$50,000 for each year of wrongful
74 incarceration, prorated as necessary to compensate for portions
75 of years.

76 (b) For sums exceeding \$500,000, payments shall be made in
77 equal annual installments prorated over 10 years.

78 (c) Any person who receives prorated payments pursuant to
79 (b), and who subsequently pleads guilty or nolo contendere to,
80 or is convicted of, regardless of adjudication, a felony shall,
81 immediately upon conviction not be eligible to receive any
82 unpaid amounts or benefits pursuant to this Act. Any amount
83 forfeited shall revert to the state General Revenue Fund.

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84 (d) If the claimant has not executed the release and
85 waiver pursuant to (7)(a), the claimant is not precluded from
86 filing a claim bill in accordance with the current rules of the
87 House of Representatives and the Senate, which shall be the sole
88 redress of any dispute regarding any part of this Act.

89 (7)(a) Before payment is tendered the claimant must
90 present to the Chief Financial Officer an executed release and
91 waiver on behalf of the claimant or his or her heirs,
92 successors, and/or assigns forever releasing the State of
93 Florida or any agency, instrumentality, officer, employee, or
94 political subdivision thereof, or any other entity subject to
95 the provisions of section 768.28, Florida Statutes, from any and
96 all present or future claims the claimant or his or her heirs,
97 successors, and/or assigns may have against such enumerated
98 entities and arising out of the factual situation in connection
99 with the conviction for which the compensation is being sought
100 under this act.

101 (b) Declaratory action to obtain judicial expungement of
102 the claimant's judicial and executive branch records as
103 otherwise provided by law is not prohibited by this act.

104 (8)(a) The Chief Financial Officer shall process and pay
105 the claim according to the request for payment made by the
106 Department of Legal Affairs within a reasonable time after
107 receiving the Department's request which may not exceed 90 days.

108 (b) Payment shall be made pursuant to specific
109 appropriation provided to the Department of Legal Affairs.

110 (c) In the event that payments are prorated pursuant to
111 this Act, the Department of Legal Affairs shall include in its
112 annual legislative budget request a specific appropriation for
113 funds sufficient to make prorated payments due under this
114 section during each relevant fiscal year. It is the intent of

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115 the Legislature that any amounts appropriated pursuant to
116 authority granted by this Act shall be from recurring funds for
117 a sufficient length of time to cover the obligation.

118 (9) Any claimant who is compensated pursuant to this act
119 shall also have tuition and fees waived for up to a total of 120
120 hours of instruction at any career center established pursuant
121 to s. 1001.44, Florida Statutes, at any community college
122 established under part III of chapter 1004, Florida Statutes, or
123 any state university. For any educational benefit made, the
124 claimant is required to meet and maintain the regular admission
125 requirements of, and be registered at, such career center,
126 community college, or state university and make satisfactory
127 academic progress as defined by the educational institution in
128 which the claimant is enrolled.

129 (10) The Legislature shall not be deemed by this act or by
130 the payment of any claim to have waived any defense of sovereign
131 immunity or to have increased the limits of liability on behalf
132 of the state or any person subject to the provisions of s.
133 768.28, Florida Statutes, or any other law.

134 (11) Any amount awarded by this act is intended to provide
135 the sole compensation for any and all present and future claims
136 arising out of the factual situation in connection with the
137 claimant's conviction and imprisonment. No further award for
138 attorney's fees, lobbying fees, costs, or other similar expenses
139 shall be made by the state.

140 (12) The Legislature is authorized to make an official
141 apology to the claimant on behalf of the State.

142 Section 2. This act shall take effect October 1, 2006.

144 ===== T I T L E A M E N D M E N T =====

145 Remove the entire title and insert:

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Amendment No. (for drafter's use only)

A bill to be entitled

An act relating to compensation for wrongful incarceration; providing that specified persons who have been wrongfully incarcerated and are actually innocent may be compensated under certain circumstances; prohibiting compensation under specified circumstances; providing a definition of "actually innocent"; requiring that the claimant submit specified documents as proof of wrongful incarceration; directing the Department of Legal Affairs to review and process the application; providing timelines for such review; providing for legislative redress of disputes; providing criteria for payment by the Chief Financial Officer; providing for forfeiture of unpaid amounts under specified circumstances; requiring a specified release and waiver; providing that payment be made pursuant to specific appropriation; providing for the waiver of specified tuition and fees; providing that the Legislature is not deemed to have waived any defense of sovereign immunity nor increased the limits of liability; providing legislative intent; authorizing the Legislature to make an official apology; providing an effective date.

WHEREAS, the Legislature recognizes that no system of justice is impervious to human error. "Given the myriad safeguards provided to assure a fair trial, and taking into account the reality of the human fallibility of the participants, there can be no such thing as an error-free, perfect trial, and ...the Constitution does not guarantee such a trial." United States v. Hasting, 461 U.S. 499 (1983), and

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175 WHEREAS, the Legislature acknowledges that the state's
176 system of justice infrequently yields imperfect results which
177 may have tragic consequences, and

178 WHEREAS, this Act is based on a moral desire to
179 acknowledge those who are actually innocent, and is not a
180 recognition of a constitutional right or violation; and

181 WHEREAS, the Legislature intends that any compensation
182 made pursuant to this Act be the sole compensation to be
183 provided by the state for any and all present and future claims
184 arising out of the factual situation in connection with the
185 claimant's conviction and imprisonment, NOW, THEREFORE,
186
187

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Adopted
A18A1
Bill No.

COUNCIL/COMMITTEE ACTION

ADOPTED	<u>Y</u> (Y/N)
ADOPTED AS AMENDED	<u>—</u> (Y/N)
ADOPTED W/O OBJECTION	<u>—</u> (Y/N)
FAILED TO ADOPT	<u>—</u> (Y/N)
WITHDRAWN	<u>—</u> (Y/N)
OTHER	<u>—</u>

1 Council/Committee hearing bill:

2 Representative(s) Quinones offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Remove line(s) 33 and insert:

6 claim pursuant to this Act, not including the wrongful
7 incarceration for which compensation is being sought pursuant to
8 this Act; or

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Location: 28 HOB

Summary:

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PCB CLAM 06-03 Favorable With Amendments (2)

Yeas: 2 Nays: 1